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10.01.2023
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 23956 of 2019

**Arup Kumar Das
-versus
The State of West Bengal & Ors.**

**Mr. Swapan Kumar Nandi,
Mr. Debjyoti Ghosh.
...For the Petitioner.**

**Mr. Gautam Lahiri.
...For the Respondent
Nos.4 to 7.**

**Mr. Sujit Kumar Ghose,
Mr. Soumyajit Bhatta.
...For the Respondent No.9.**

**Mr. Bipin Ghosh.
...For the State.**

Report has been filed by the Sub-Assistant Engineer, Serampore Municipality and the Chairperson of the said Municipality.

It appears therefrom that sanction for making construction in favour of the private respondent was granted by the Municipality in the year 2006 with side and front open space measuring 1 ft. 7 inches.

As per the direction of the Municipality, one plan for actual construction of the alleged premises was asked to be submitted by the person responsible and the actual plan was sanctioned in the year 2007 in

respect of the ground floor of the said premises and the extra construction, which was made, has also been approved by the Board of Councillors.

Subsequently, the person responsible i.e. the private respondent applied for construction of the 1st floor and the same was sanctioned in the year 2016. No extra projection in respect of the holding has been found.

At the time of site inspection, both the parties were present and it was seen that a G+1 storied construction with a common passage for ingress and egress with a front cantilever was constructed upto the roof top. The side open space of the building is 1 ft. 7 inches.

As per the sanctioned plan of the building, one fine plan was sanctioned by the Municipality and the unauthorized construction has been waived by payment of fine. Thereafter, no further construction has been done.

Learned advocate appearing for the private respondent relies upon an agreement allegedly executed by and between the parties whereby the parties agreed that construction may be made by maintaining 1 ft. 6 inches space in between the two premises.

Learned advocate appearing for the petitioner denies that any such agreement was ever executed by the parties.

Learned advocate appearing for the petitioner further submits that the Municipality did not mention anything with regard to the agreement for the purpose of sanctioning the building plan.

From the submissions made on behalf of the parties, it appears that the construction in question in the ground floor level is in place for more than ten years prior to the first objection being filed by the petitioner in the year 2016.

The unauthorized construction, if any, has been regularized by the Municipality upon acceptance of fine.

The act of the Municipality in regularizing the unauthorized construction, is not under challenge.

In view of the above, the construction in question cannot be treated to be an unauthorized one.

Accordingly, no relief can be granted to the petitioner in the instant case.

The writ petition fails and is hereby dismissed.

Affidavit-in-reply filed in Court today is taken on record.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)